

AMENDED IN ASSEMBLY MARCH 5, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 70

Introduced by Assembly Member Wyland

December 13, 2002

An act to amend Section ~~530.5~~ 502.01 of the Penal Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 70, as amended, Wyland. Identity theft.

Existing law provides that any computer, computer system, computer network, or any software or data, owned by the defendant that is used during the commission of specified offenses shall be subject to forfeiture.

This bill would add to the list of offenses for which a computer, computer system, computer network, or any software or data used in the commission of the offense would be subject to forfeiture.

~~Existing law makes it a misdemeanor or a felony to willfully obtain personal identifying information, as defined, of another person, and use that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person.~~

~~This bill would make this offense a misdemeanor if the credit, goods, services, medical information, or thing of value obtained is less than \$500, or a felony if the credit, goods, services, medical information, or thing of value obtained is more than \$500. Because this bill would require an offense over \$500 to be prosecuted as a felony, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 530.5 of the Penal Code is amended to~~
2 ~~SECTION 1. Section 502.01 of the Penal Code is amended to~~
3 ~~read:~~
4 502.01. (a) As used in this section:
5 (1) “Property subject to forfeiture” means any property of the
6 defendant that is illegal telecommunications equipment as defined
7 in subdivision (g) of Section 502.8, or a computer, computer
8 system, or computer network, and any software or data residing
9 thereon, if the telecommunications device, computer, computer
10 system, or computer network was used in committing a violation
11 of, or conspiracy to commit a violation of, Section 422, 470, 470a,
12 470b, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or
13 (d) of Section 484e, ~~subdivision (a)~~ *subdivisions (a) and (b)* of
14 Section 484f, subdivision (b) or (c) of Section 484i, subdivision
15 (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,
16 537e, 550, 593d, 593e, or 646.9, *or Section 1871.4 of the*
17 ~~Insurance Code~~, or was used as a repository for the storage of
18 software or data obtained in violation of those provisions.
19 Forfeiture shall not be available for any property used solely in the
20 commission of an infraction. If the defendant is a minor, it also
21 includes property of the parent or guardian of the defendant.
22 (2) “Sentencing court” means the court sentencing a person
23 found guilty of violating or conspiring to commit a violation of
24 Section 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or
25 subdivision (a), (b), or (d) of Section 484e, subdivision (d) of
26 Section 484e, subdivision (a) of Section 484f, subdivision (b) or
27 (c) of Section 484i, subdivision (c) of Section 502, or Section
28 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, or, in
29 the case of a minor, found to be a person described in Section 602

1 of the Welfare and Institutions Code because of a violation of those
2 provisions, the juvenile court.

3 (3) “Interest” means any property interest in the property
4 subject to forfeiture.

5 (4) “Security interest” means an interest that is a lien,
6 mortgage, security interest, or interest under a conditional sales
7 contract.

8 (5) “Value” has the following meanings:

9 (A) When counterfeit items of computer software are
10 manufactured or possessed for sale, the “value” of those items
11 shall be equivalent to the retail price or fair market price of the true
12 items that are counterfeited.

13 (B) When counterfeited but unassembled components of
14 computer software packages are recovered, including, but not
15 limited to, counterfeited computer diskettes, instruction manuals,
16 or licensing envelopes, the “value” of those components of
17 computer software packages shall be equivalent to the retail price
18 or fair market price of the number of completed computer software
19 packages that could have been made from those components.

20 (b) The sentencing court shall, upon petition by the prosecuting
21 attorney, at any time following sentencing, or by agreement of all
22 parties, at the time of sentencing, conduct a hearing to determine
23 whether any property or property interest is subject to forfeiture
24 under this section. At the forfeiture hearing, the prosecuting
25 attorney shall have the burden of establishing, by a preponderance
26 of the evidence, that the property or property interests are subject
27 to forfeiture. The prosecuting attorney may retain seized property
28 that may be subject to forfeiture until the sentencing hearing.

29 (c) Prior to the commencement of a forfeiture proceeding, the
30 law enforcement agency seizing the property subject to forfeiture
31 shall make an investigation as to any person other than the
32 defendant who may have an interest in it. At least 30 days before
33 the hearing to determine whether the property should be forfeited,
34 the prosecuting agency shall send notice of the hearing to any
35 person who may have an interest in the property that arose before
36 the seizure.

37 A person claiming an interest in the property shall file a motion
38 for the redemption of that interest at least 10 days before the
39 hearing on forfeiture, and shall send a copy of the motion to the
40 prosecuting agency and to the probation department.

1 If a motion to redeem an interest has been filed, the sentencing
2 court shall hold a hearing to identify all persons who possess valid
3 interests in the property. No person shall hold a valid interest in the
4 property if, by a preponderance of the evidence, the prosecuting
5 agency shows that the person knew or should have known that the
6 property was being used in violation of, or conspiracy to commit
7 a violation of, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
8 311.11, 470, 470a, 470b, 472, 475, 476, 480, 483.5, 484g, or
9 subdivision (a), (b), or (d) of Section 484e, ~~subdivision (a)~~
10 ~~subdivisions (a) and (b)~~ of Section 484f, subdivision (b) or (c) of
11 Section 484i, subdivision (c) of Section 502, or Section 502.7,
12 502.8, 529, 529a, 530.5, 537e, 550, 593d, 593e, or 646.9, *or*
13 *Section 1871.4 of the Insurance Code*, and that the person did not
14 take reasonable steps to prevent that use, or if the interest is a
15 security interest, the person knew or should have known at the time
16 that the security interest was created that the property would be
17 used for a violation.

18 (d) If the sentencing court finds that a person holds a valid
19 interest in the property, the following provisions shall apply:

20 (1) The court shall determine the value of the property.

21 (2) The court shall determine the value of each valid interest in
22 the property.

23 (3) If the value of the property is greater than the value of the
24 interest, the holder of the interest shall be entitled to ownership of
25 the property upon paying the court the difference between the
26 value of the property and the value of the valid interest.

27 If the holder of the interest declines to pay the amount
28 determined under paragraph (2), the court may order the property
29 sold and designate the prosecutor or any other agency to sell the
30 property. The designated agency shall be entitled to seize the
31 property and the holder of the interest shall forward any
32 documentation underlying the interest, including any ownership
33 certificates for that property, to the designated agency. The
34 designated agency shall sell the property and pay the owner of the
35 interest the proceeds, up to the value of that interest.

36 (4) If the value of the property is less than the value of the
37 interest, the designated agency shall sell the property and pay the
38 owner of the interest the proceeds, up to the value of that interest.

1 (e) If the defendant was a minor at the time of the offense, this
2 subdivision shall apply to property subject to forfeiture that is the
3 property of the parent or guardian of the minor.

4 (1) The prosecuting agency shall notify the parent or guardian
5 of the forfeiture hearing at least 30 days before the date set for the
6 hearing.

7 (2) The computer or telecommunications device shall not be
8 subject to forfeiture if the parent or guardian files a signed
9 statement with the court at least 10 days before the date set for the
10 hearing that the minor shall not have access to any computer or
11 telecommunications device owned by the parent or guardian for
12 two years after the date on which the minor is sentenced.

13 (3) If the minor is convicted of a violation of Section 470, 470a,
14 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d)
15 of Section 484e, subdivision (a) of Section 484f, subdivision (b)
16 of Section 484i, subdivision (c) of Section 502, or Section 502.7,
17 502.8, 529, 529a, or 530.5, within two years after the date on
18 which the minor is sentenced, and the violation involves a
19 computer or telecommunications device owned by the parent or
20 guardian, the original property subject to forfeiture, and the
21 property involved in the new offense, shall be subject to forfeiture
22 notwithstanding paragraph (2).

23 (4) Notwithstanding paragraph (1), (2), or (3), or any other
24 provision of this chapter, if a minor's parent or guardian makes full
25 restitution to the victim of a crime enumerated in this chapter in an
26 amount or manner determined by the court, the forfeiture
27 provisions of this chapter do not apply to the property of that parent
28 or guardian if the property was located in the family's primary
29 residence during the commission of the crime.

30 (f) Notwithstanding any other provision of this chapter, the
31 court may exercise its discretion to deny forfeiture where the court
32 finds that the convicted defendant, or minor adjudicated to come
33 within the jurisdiction of the juvenile court, is not likely to use the
34 property otherwise subject to forfeiture for future illegal acts.

35 (g) If the defendant is found to have the only valid interest in
36 the property subject to forfeiture, it shall be distributed as follows:

37 (1) First, to the victim, if the victim elects to take the property
38 as full or partial restitution for injury, victim expenditures, or
39 compensatory damages, as defined in paragraph (1) of subdivision
40 (e) of Section 502. If the victim elects to receive the property under

1 this paragraph, the value of the property shall be determined by the
2 court and that amount shall be credited against the restitution owed
3 by the defendant. The victim shall not be penalized for electing not
4 to accept the forfeited property in lieu of full or partial restitution.

5 (2) Second, at the discretion of the court, to one or more of the
6 following agencies or entities:

7 (A) The prosecuting agency.

8 (B) The public entity of which the prosecuting agency is a part.

9 (C) The public entity whose officers or employees conducted
10 the investigation resulting in forfeiture.

11 (D) Other state and local public entities, including school
12 districts.

13 (E) Nonprofit charitable organizations.

14 (h) If the property is to be sold, the court may designate the
15 prosecuting agency or any other agency to sell the property at
16 auction. The proceeds of the sale shall be distributed by the court
17 as follows:

18 (1) To the bona fide or innocent purchaser or encumbrancer,
19 conditional sales vendor, or mortgagee of the property up to the
20 amount of his or her interest in the property, if the court orders a
21 distribution to that person.

22 (2) The balance, if any, to be retained by the court, subject to
23 the provisions for distribution under subdivision (g).
24 read:

25 ~~530.5.—(a) Every person who willfully obtains personal~~
26 ~~identifying information, as defined in subdivision (b), of another~~
27 ~~person, and uses that information for any unlawful purpose,~~
28 ~~including to obtain, or attempt to obtain, credit, goods, services,~~
29 ~~or medical information in the name of the other person without the~~
30 ~~consent of that person, is guilty of a public offense, and upon~~
31 ~~conviction therefor, shall be punished as follows:~~

32 ~~(1) If the credit, goods, services, medical information, or thing~~
33 ~~of value obtained is less than five hundred dollars (\$500) it shall~~
34 ~~be a misdemeanor punished by imprisonment in a county jail not~~
35 ~~to exceed one year, a fine not to exceed one thousand dollars~~
36 ~~(\$1,000), or both that imprisonment and fine.~~

37 ~~(2) If the credit, goods, services, medical information, or thing~~
38 ~~of value obtained is more than five hundred dollars (\$500) it shall~~
39 ~~be a felony punished by imprisonment in the state prison.~~

1 ~~(b) “Personal identifying information,” as used in this section,~~
2 ~~means the name, address, telephone number, driver’s license~~
3 ~~number, social security number, place of employment, employee~~
4 ~~identification number, mother’s maiden name, demand deposit~~
5 ~~account number, savings account number, or credit card number~~
6 ~~of an individual person.~~

7 ~~(c) In any case in which a person willfully obtains personal~~
8 ~~identifying information of another person without the~~
9 ~~authorization of that person, and uses that information to commit~~
10 ~~a crime in addition to a violation of subdivision (a), and is~~
11 ~~convicted of that crime, the court records shall reflect that the~~
12 ~~person whose identity was falsely used to commit the crime did not~~
13 ~~commit the crime.~~

14 ~~SEC. 2.—No reimbursement is required by this act pursuant to~~
15 ~~Section 6 of Article XIII B of the California Constitution because~~
16 ~~the only costs that may be incurred by a local agency or school~~
17 ~~district will be incurred because this act creates a new crime or~~
18 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
19 ~~for a crime or infraction, within the meaning of Section 17556 of~~
20 ~~the Government Code, or changes the definition of a crime within~~
21 ~~the meaning of Section 6 of Article XIII B of the California~~
22 ~~Constitution.~~

